

## LETTER OF FINDINGS NUMBER: 06-0021

## IFTA

## For Tax Years 2003-04

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**ISSUE****I. IFTA–Audit Method**

**Authority:** IFTA A550; IFTA VI.A.3

Taxpayer protests the Department's fuel mileage calculation method.

**II. Tax Administration–Negligence Penalty**

**Authority:** [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#)

Taxpayer protests the imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer owns two trucks and hauls loads for third parties. As the result of an audit, the Indiana Department of Revenue ("Department") determined that taxpayer owed International Fuel Tax Agreement ("IFTA") taxes for the tax years 2003 and 2004. Taxpayer protests the Department's method of calculating the amount of fuel used during this period. Further facts will be supplied as required.

**I. IFTA–Audit Method****DISCUSSION**

Taxpayer protests the imposition of IFTA taxes for the tax years 2003 and 2004. The Department conducted an audit and determined that taxpayer owed additional IFTA taxes for those years. The Department based its decision on the best information available to it, since taxpayer had no records to review.

Taxpayer argues that by its calculations the fuel consumption used in the audit determination was incorrect. IFTA article A550 provides that in the absence of adequate records, a standard 4.00 miles per gallon (MPG) rate can be used to compute total fuel consumption. Given the absence of records to establish mileage and fuel consumption this was an appropriate method of calculation by the audit.

Taxpayer states that it would be out of business if its trucks got 4.00 MPG. The Department refers to IFTA VI.A.3, which states in relevant part:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn into question, the burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive.

Taxpayer has not met the burden of establishing by a fair preponderance of evidence that the assessments are erroneous or excessive, as required by IFTA VI.A.3. Taxpayer has not provided any documentation or analysis in support of its protest. Therefore, the Department was correct to use the 4.00 MPG rate in its calculations of IFTA taxes.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration–Negligence Penalty****DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

The Department refers to [IC 6-8.1-10-2.1\(a\)](#), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under [IC 6-8.1-10-2.1\(a\)](#). Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#). The negligence penalty shall be waived.

**FINDING**

Taxpayer's protest is sustained.

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